IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/08/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 9242 OF 2002
and
W.P.M.P.Nos. 12526, 12527 & 26807 OF 2002

A. Salaivasavan .. Petitioner

-Vs-

1. The Management of India Tourism
Development Corporation Ltd.,
rep. by its Chairman &
Managing Director, SCOPE Complex,
Core '8' 6th Floor,
No.7, Lodi Road,
New Delhi 110 003.

2. The Regional Manager (South)
India Tourism Development
Corporation Limited,
No.29, Victoria Crescent,
Ethiraj Salai,
Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr. V. Prakash

For Respondents : Mr. C. Franco Louis

:J U D G M E N T

This Writ Petition has been filed by the petitioner seeking for a Writ of Mandamus directing the respondents to issue posting orders to the petitioner.

2. The first respondent is a wholly owned Government company and is an instrumentality of the Central Government. It has got several activities such as promoting tourism, marketing its hotels and services, running hotels, organising tours and running free International shops and also offering consultancy managerial service in India and abroad and also providing tourist transport facilities. Petitioner joined the service under the first

respondent as Assistant Manager (Marketing and Hotel Sales). He was posted at the Regional Office (South), Chennai by the appointment order dated 3.7.1995 and he joined on 19.7 .1995. Subsequently he was posted at Madurai to lookafter the marketing efforts in South Tamil Nadu among the Corporate Houses at Trichy, Karur, Tuticorin, Sivakasi and Rajapalayam and other southern districts. For the aforesaid purpose, the petitioner was stationed at Hotel Madurai Ashok, one of the hotels which was under the management and ownership of the Corporation. Even though salary of the petitioner was being paid by the Hotel management, the same was being debited to the Head Office account of the Corporation. The confidential reports of the staff of the hotel were being written by Hotel Madurai Ashok, but so far as the petitioner is concerned, his annual performance was being separately appraised by the Regional Manager, (South) based at Chennai. The petitioner's case is that for all purposes he was an employee under the Corporation in Marketing and Hotel

Sales and he was not the employee in any particular hotel and for administrative convenience he had been based at Hotel Madurai Ashok, but he was not an employee in the said hotel.

2. While the matter stood thus, pursuant to the policy decision to sell various hotels belonging to Ithe Corporation, Hotel Madurai Ashok was sold to another person and as per the arrangement, the services of the employee under the Hotel Madurai Ashok were also placed under the new owner and they become the employees under the new owner and ceased to be the employees of the Corporation. It has been stated by the petitioner that though he was not an employee under the Hotel, by mistake his name was included in the names of the employees' under the Hotel and he was asked to report to the new management. This has necessiated the filing of the present writ petition.

3. It has been indicated in the writ petition that all other persons who were employed in the Marketing and Hotel Sales Division have been retained under the first respondent Corporation. The petitioner has contended that he should be treated as an employee under the Corporation in its Marketing and Hotel Sales Division (subsequently renamed as Ashok Reservation and Marketing Services, in short ARMS). The petitioner has made several representations to that effect which have not borne any fruit.

4. In the counter affidavit filed on behalf of the respondents it has been indicated that pursuant to the policy decision to disinvest hotel properties of ITDC, Hotel Madurai Ashok had been sold and as per the arrangement, regular employees of the unit have been transferred to the new owner. It has been submitted that since the petitioner had been transferred and posted at Madurai since March 1998, his services had been placed under new owner. It has been indicated that the petitioner was reporting at Hotel Madurai Ashok by signing attendance register there, submitting his leave application, getting conveyance and travelling allowance from the hotel and also drawing salary from the hotel and therefore was administratively reporting to the unit held at Madurai, though incidentally the petitioner was report to DGM (M&HS), South based at Bangalore.

5. Clause 9.4 of the Scheme of Arrangement between ITDC and Madurai Hotels Private Limited which has purchased the Hotel Madurai Ashok envisages :-

" 9.4. The Purchaser will cause the Company to continue to employ all the regular employees of the Unit which have been transferred to the Company on the terms and conditions that shall not be inferior to the terms and conditions as applicable to the regular employees on the date of transfer of the Unit including with respect to the voluntary retirement scheme applicable to the company as per the guidelines of the Department of Public Enterprise, if any, and terms set out in agreements entered into by ITDC in relation to such regular employees with staff / workers unions/associations. The purchaser further covenants that it shall cause the company to ensure that:

(i) the services of the regular employees will not be interrupted.

(ii) the terms and conditions of service applicable to the regular employees will not in any way be less favourable than those applicable tot hem immediately on the date hereof.

(iii) It shall not retrench any of its regular employees for a period of one year from the Closing Date other than any dismissal or termination of regular employees from their employment in accordance with the applicable staff regulations and standing order of the Company or applicable law.

(iv) in the event of retrenchment of regular employees, the company shall pay the regular employees such compensation as is required under applicable labour laws on the basis that the service of the regular employees have been continuous and uninterrupted.

(v) the company will only undertake dismissal or termination of the services of the regular employees in accordance with the applicable staff regulations provided that no retrenchment of an Employee would be undertaken unless the affected employee is given benefits which are higher of (a) the voluntary retirement scheme applicable to the company as per the guidelines of the Department of Public Enterprises as of the date here and (b) the benefits / compensation required to be statutorily given to an employee under applicable law.

(vi) in respect of contract employees the terms and conditions of the relevant contracts shall be fully observed by the company and the purchaser shall keep Government and ITDC indemnified against damages, losses or claims resulting on account of the company failing to observe any of the terms and conditions of such contracts."

6. There is no doubt that if the petitioner is considered to be " regular employee of the unit", that is to say, regular employee of the Hotel Madurai Ashok, he cannot claim to be still continuing as employee under ITDC. On the other hand if the petitioner is not considered to be a "regular employee of the unit", that is to say, Hotel Madurai Ashok before it was transferred, it must be taken that he should be treated as employee under ITDC

at par with other similarly situated persons. To consider this aspect, it is necessary to consider various documents relating to appointment and posting of the petitioner with a view to ascertain as to whether in fact he was an employee of Hotel Madurai Ashok.

7. First, in point of time, is obviously the order of appointment dated 3.7.1995. Subject of the aforesaid letter is " offer of appointment for the post of Assistant Manager (Marketing-Hotel Sales)". The relevant portion of the letter reads as follows :-

" With reference to your application and the subsequent interview held on 24.6.95 for employment in our Corportion, we have pleasure in offering you the post of Asstt.Manager (Mktg-Hotel Sales) RO(S), Madras. ... "

The aforesaid letter makes it clear that initial appointment was as the Assistant Manager (Marketing and Hotel Sales) and he was posted in the Regional Office (Sales) at Madras. This initial order of appointment does not indicate that the petitioner had been recruited as an employee under any of the hotels of ITDC, far less Hotel Madurai Ashok.

8. Subsequently, on 26.3.98 the Vice President of Marketing and Hotel Sales issued a letter regarding restructuring marketing and hotel sales set up in Southern Region. While making arrangement for various other officials in Marketing and Hotel Sales Division, it was indicated in paragraph 4 as follows :-

" Shri A. Salaivasavan, Asstt. Manager (M&HS) based at Hotel Madurai Ashok will be responsible for the Madurai market and suburbs surroundings. He shall spent 2 weeks on tour to nearby markets such as Trichy, Karur, Tuticorin, Rajapalayam, Sivakasi in order to explore business from there."

It was further indicated in the aforesaid letter:

" All the executives belonging to M&HS and based in South shall report to DGM(M&HS)-South based at Bangalore who in turn will report to VP (M&HS)."

This letter also unequivocally points out that the petitioner was considered as belonging to Marketing and Hotel Sales, but he was merely based at Hotel Madurai Ashok. This letter does not indicate that the petitioner was "employed under the Hotel Madurai Ashok". On the other hand the petitioner was required to report to DGM (M&HS)-South based at Bangalore who in turn was required to report to the Vice President. This would rather go to indicate that the petitioner still continued under the Marketing and Hotel Sales Division and not as a "regular employee under the Hotel".

9. Subsequently on 27.3.98 an office order was passed to the following effect :-

" In order to facilitate smooth day to day functioning of M&HS executives based at the hotel units in the Southern Region, it is proposed that they draw all the regular payments / reimbursements and other

entitlements as in the case of other executives based in the hotels, from their unit of posting.

They will put up their requisition to the concerned DGM/GM/Unit Heads who will accord administrative and financial approval under their respective Delegation of Powers.

The expenditure in this connection would however be debited to Hqrs. Marketing Division."

This letter again does not indicate the intention of the Corporation to place the services of the petitioner under Hotel Madurai Ashok. On the other hand only for convenience, persons like petitioner were allowed to draw their payment from the hotels where they were based, but such expenditure was to be debited "to the Head Quarters Marketing Division". This again clearly indicate the fact that all such persons including the petitioner were considered to be under Marketing and Hotel Sales Division. This position was akin to that of a person on deputation.

10. These documents along with other documents relied upon by the petitioner, namely various correspondence and reports of the reporting officer, etc., clearly indicate that at no point of time the petitioner was treated "as a regular employee of the Hotel Madurai Ashok", but it was all along considered that the petitioner was employed by the Corporation in its Marketing and Sales Division and was merely " based' at Hotel Madurai Ashok at the time when it was decided to sell Hotel Madurai Ashok to another person. Merely because the petitioner happened to be based in that particular hotel, he could not have been treated as a regular employee of that hotel. Even the duties of the petitioner did not indicate that he was employed for that particular Hotel.

11. It is not disputed that other officials in Marketing and Hotel Sales Division have been retained under ITDC and are now working in ARMS Division of ITDC, but merely because the petitioner's name was included in the list of employees of the Hotel obviously due to some oversight, the petitioner was not treated as an employee under ITDC. In the counter affidavit filed on behalf of the respondents no conclusive materials have been produced to show anything to the contrary.

12. For the aforesaid reasons, I am inclined to allow the writ petition and direct that the petitioner should be treated as an employee under India Tourism Development Corporation (ARMS Division) and appropriate posting order may be issued. The writ petition is accordingly allowed and consequently all the Miscellaneous Petitions are disposed of. No costs.

Index : Yes
Internet : Yes
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To

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